

(2007) 11 AHC CK 0093

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 17478 of 2002

Chaturi Lal And Another

APPELLANT

Vs

XVth Additional District Judge, Kanpur Nagar And Others

RESPONDENT

Date of Decision : 23-11-2007

Acts Referred:

Citation : (2007) 11 AHC CK 0093

Hon'ble Judges : Rakesh Tiwari, J

Final Decision : Allowed

Judgement

Rakesh Tiwari, J.—Heard Counsel for the parties.

2. This writ petition has been filed for a direction in the nature of certiorari for quashing the order dated 22.1.2002 (Annexure 7 to the writ petition), passed by the XVth Additional District Judge, Kanpur Nagar, respondent No. 1, in Misc. Application No. 38/74 of 1992 arising out of claim case No. 112 of 1991, Chaturi Lal and another v. Mahendra Singh and others.

3. Claim Case No. 112 of 1991 had been filed by the petitioner for compensation before the Motor Accident Claims Tribunal, Kanpur Nagar against Mahendra Singh and Jogendra Singh, respondent Nos. 2 and 3 respectively, in respect of his son Rama Kant aged about 21 years who died in the accident.

4. The aforesaid claim petition appears to have been dismissed in default of the petitioner.

5. Counsel for the petitioner submits that a delay condonation application along with an application for restoration was filed by the petitioners before the Tribunal on the ground that the Counsel engaged by them in the claim petition had not informed them about the dates and the proceedings though they had been consistently requesting him from time to time for information in this regard. Ultimately, when they changed the Counsel and the file was got inspected by them through their new Counsel, it was revealed that the case had been

dismissed in default earlier.

6. The Court has rejected the delay condonation application filed by the petitioner under Order 9 Rule 4, C.P.C. along with Section 5 of the Limitation Act on the ground that he has falsely maligned his erstwhile Counsel and there is no reason to believe the petitioner that his Counsel had not done the proper pairvi in the case.

7. There is no denial of the erstwhile Counsel on record that petitioners had not been in his touch and had not requested him to inform them about the dates and proceedings in the case. There is also no denial of these averments made by the petitioners in restoration and delay condonation applications by the said advocate engaged by the petitioners earlier. It also does not appear from the order that the Court had called the advocate and*had made any enquiry from him in this regard. Hence there was no basis for the Court to have come to the conclusion that the averments made by the petitioners in their aforesaid application that their erstwhile advocate engaged by them has not done the pairvi properly was false. The operative portion of the order is quoted below:

Hindi

8. The petitioner has lost his son in an accident by the vehicle of the respondents. There is no reason why he as an applicant would have wanted either to delay the proceedings before the Tribunal or would have let the proceedings go in default as his claim was for compensation before the Motor Accident Claims Tribunal, Even on humanitarian ground, the throwing of the application on irrelevant consideration that application of the applicant maligns the earlier advocate does not appear to be proper as the reasons given therein were not denied by the erstwhile Counsel.

9. The Counsel for the respondents relied upon paragraph 8 of the counter affidavit wherein it has been averred that the petitioner has failed to explain the delay on day to day basis which is required by law and submits that in this view the Court below has rightly rejected the application of the petitioner.

10. Since the petitioners have clearly averred in the application that they were regularly in contact with their advocate but they were being made to run from pillar to post without being given any proper answer/response, the delay stands explained reasonably.

11. It is noted that they had to engage another Counsel to get the information by inspection of the file. This explanation has not been denied. The reasons of day to day delay in the facts and circumstances of this particular case is explained.

12. The petitioners' son was working in a workshop and every litigant cannot be expected to appear before the Court and argue his matter as in our country majority of people are illiterate and backward socially as well as economically. Majority of them live below the poverty line and it cannot be expected that they will come far from their village on each and every date. They are simple and hold

the Courts in awe. They not being well versed in Court proceedings, hence engage advocates who are well versed with the Courts proceedings.

13. In my opinion when an advocate is engaged by a client and he accepts the brief, it is his duty to do pairvi and conduct the case under information to his client. The petitioner was ill and could not attend the Court, as such, in his absence the Advocate ought to have attended the case and performed his part of contract.

14. These factors are not to be conveniently overlooked by Tribunal when dealing with such cases as the present one losing the humanitarian approach. The tribunals are to do substantial justice but by allowing the defendant to go scotfree by dismissing the case in default and the restoration application along with delay condonation on irrelevant grounds they advance the cause of miscarriage of justice. A man who lost his earning son is made further to lose on technical ground is not justice. It must flow from heart and not mind. The loss of dependency in old age should be decided on merits of the case and door of justice should not only be done but should also shown to be done by the Courts.

15. In the case of Collector, Land Acquisition, Anantnag v. Katiji, A.I.R. 1987 S.C. 1353, the Apex Court held that Court should adopt liberal approach in restoration of the case.

16. For the reasons stated above, the writ petition is allowed. The impugned order dated 22.1.2002 is hereby quashed. Claim Case No. 112 of 1991, Chaturi Lal and another v. Mahendra Singh and others, which is in respect of compensation for the death of the son of the petitioners shall be restored on payment of Rs. 500 which shall be deposited by the petitioner along with the copy of this order before the Court below within a period of one month from today.

17. The tribunal shall after issuing notice and giving opportunity of hearing to the parties concerned, shall decide the claim application within a period of six months thereafter.